

Documents which Acquiror has approved in advance, such approval not to be unreasonably withheld. The Company shall take all actions necessary or advisable to secure the vote or consent of the Company Shareholders required by Illinois Law to approve the Merger.

#### **SECTION 6.02. Appropriate Action; Consents; Filings.**

(a) Upon the terms and subject to the conditions set forth in this Merger Agreement, the Company and Acquiror shall use all reasonable efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, and to assist and cooperate with the other parties in doing all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Merger Agreement as promptly as practicable, including (i) executing and delivering any additional instruments necessary, proper or advisable to consummate the transactions contemplated by, and to carry out fully the purposes of, this Merger Agreement, (ii) obtaining from any Governmental Entities any Licenses required to be obtained or made by Acquiror or the Company or any of their subsidiaries in connection with the authorization, execution and delivery of this Merger Agreement and the consummation of the transactions contemplated herein, including, without limitation, the Merger, and (iii) making all necessary filings, and thereafter make any other required submissions, with respect to this Merger Agreement and the Merger required under (A) the Securities Act and any other applicable federal or state securities Laws, (B) the HSR Act and (C) any other applicable Law; provided that Acquiror and the Company shall cooperate with each other in connection with the making of all such filings, including providing copies of all such Documents to the non-filing party and its advisors prior to filing and, if requested, accepting all reasonable additions, deletions or changes suggested in connection therewith. The Company and Acquiror shall furnish to each other all information required for any application or other filing to be made pursuant to the rules and regulations of any applicable Law in connection with the transactions contemplated by this Merger Agreement.

(b) (i) The Company and Acquiror shall give (or shall cause their respective subsidiaries to give) any notices to third parties, and use, and cause their respective subsidiaries to use, all reasonable efforts to obtain any third party consents, approvals or waivers (A) necessary, proper or advisable to consummate the transactions contemplated in this Merger Agreement, (B) disclosed or required to be disclosed in the Company Disclosure Schedule or the Acquiror Disclosure Schedule, as the case may be, or (C) required to prevent a Company Material Adverse Effect from occurring prior to or after the Effective Time or an Acquiror Material Adverse Effect from occurring after the Effective Time.

(ii) In the event that any party shall fail to obtain any third party consent, approval or waiver described in subsection (b)(i) above, such party shall use all reasonable efforts, and shall take any such actions reasonably

requested by the other parties hereto, to minimize any adverse effect upon the Company and Acquiror, their respective subsidiaries, and their respective businesses resulting, or which could reasonably be expected to result after the Effective Time, from the failure to obtain such consent, approval or waiver.

(c) From the date of this Merger Agreement until the Effective Time, the Company and Acquiror shall promptly notify each other in writing of any pending or, to the knowledge of the Company or Acquiror (or their respective subsidiaries), threatened action, proceeding or investigation by any Governmental Entity or any other Person (i) challenging or seeking damages in connection with the Merger or the conversion of the Company Capital Stock into Acquiror Common Stock pursuant to the Merger or (ii) seeking to restrain or prohibit the consummation of the Merger or otherwise limit the right of Acquiror or its subsidiaries to own or operate all or any portion of the businesses or Assets of the Company or any Subsidiary. The Company and Acquiror shall cooperate with each other in defending any such action, proceeding or investigation, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed.

#### **SECTION 6.03. Letters of Accountants.**

The Company shall use its best efforts to cause to be delivered to Acquiror a "cold comfort" letter of Arthur Andersen LLP, its independent public accountant, dated as of the Effective Time, and addressed to Acquiror, reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Merger Agreement.

#### **SECTION 6.04. Update Disclosure; Breaches.**

From and after the date of this Merger Agreement until the Effective Time, each party hereto shall promptly notify the other parties hereto by written update to its Disclosure Schedule of (i) any representation or warranty made by it in connection with this Merger Agreement becoming untrue or inaccurate, (ii) the occurrence, or non-occurrence, of any event the occurrence, or non-occurrence, of which would be likely to cause any condition to the obligations of any party to effect the Merger and the other transactions contemplated by this Merger Agreement not to be satisfied, or (iii) the failure of the Company or Acquiror, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it pursuant to this Merger Agreement which would be likely to result in any condition to the obligations of any party to effect the Merger and the other transactions contemplated by this Merger Agreement not to be satisfied; provided, however, that the delivery of any notice pursuant to this Section 6.04 shall not cure any breach of any representation or warranty requiring disclosure of such matter prior to the date of this Merger Agreement (or, in the case of disclosures permitted

to be made within fifteen (15) days after the date of this Merger Agreement, shall not cure any breach of any representation or warranty requiring disclosure of such matter prior to such later date) or otherwise limit or affect the rights and remedies available hereunder to the party receiving such notice. The Company shall deliver to Acquiror updated versions of Sections 3.10 and 3.14(a) of the Company Disclosure Schedule as of the Closing Date, solely to reflect events occurring between the date of this Merger Agreement (or, in the case of disclosures permitted to be made within fifteen (15) days after the date of this Merger Agreement, between such later date) and the Closing Date, or shall have notified Acquiror that no changes to such Sections of the Company Disclosure Schedule are required.

#### **SECTION 6.05. Investment Agreements.**

Prior to the Effective Time, the Company shall obtain Investment Agreements from each Company Shareholder who is to receive shares of Acquiror Common Stock in the Merger; provided that the Company shall use its best efforts to obtain such Investment Agreements from each such Company Shareholder as soon as practicable after the date of this Merger Agreement.

#### **SECTION 6.06. Public Announcements.**

Acquiror and the Company shall consult with each other before issuing or making, and shall give each other the opportunity to review and comment upon, any press release or other public statement with respect to the Merger and the other transactions contemplated in this Merger Agreement, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by Law or any listing agreement with the NASD.

#### **SECTION 6.07. Employee Matters.**

The Company, the Subsidiaries and Acquiror shall use their respective best efforts to cause the officers and employees of the Company and the Subsidiaries listed in Schedule 6.07 to this Merger Agreement and each other key employee of the Company and the Subsidiaries designated by Acquiror and consented to by the Company (such consent not to be unreasonably withheld) (the "Company Key Employees") to enter into employment, confidentiality and non-competition agreements, in the form of Acquiror's standard Employment, Confidentiality and Non-Competition Agreement, a copy of which is attached hereto as Exhibit B (the "Employment Agreements"), at or prior to the Effective Time. At the Effective Time, Acquiror shall grant to each Company Key Employee who so executes and delivers an Employment Agreement an option (an "Acquiror Option" and collectively, the "Acquiror Options") to purchase a number of shares of Acquiror Common Stock determined by Acquiror after consultation with the Company. Acquiror and the Company anticipate that a maximum of 1.5 million shares of

Acquiror Common Stock shall be subject to the Acquiror Options, assuming all of the Company Key Employees execute and deliver Employment Agreements. The Acquiror Options (a) shall have an exercise price per share of Acquiror Common Stock equal to the fair market value of the Acquiror Common Stock on the date of grant, determined in accordance with Acquiror's 1996 Employee Stock Option Plan (the "Acquiror Stock Option Plan"), (b) shall vest in accordance with the vesting schedule set forth in Schedule 6.07 hereto, and (c) shall have such other terms as are specified in Acquiror's form of Stock Option Agreement for senior management employees, a copy of which is attached hereto as Exhibit C, and in the Acquiror Stock Option Plan.

#### **SECTION 6.08. Acquiror Information.**

Acquiror shall provide to the Company and its attorneys, accountants and other representatives all information reasonably requested by any such Person in connection with the preparation of a disclosure document to be utilized in the solicitation of proxies in favor of the Merger from the Company Shareholders.

#### **SECTION 6.09. Obligations of Acquiror Sub.**

Acquiror shall take all action necessary to cause Acquiror Sub to perform its obligations under this Merger Agreement and to consummate the Merger on the terms and conditions set forth in this Merger Agreement.

#### **SECTION 6.10. Unaudited Financial Information.**

The Company will cause to be prepared and will furnish to Acquiror as promptly as possible an unaudited consolidated balance sheet of the Company and the Subsidiaries as of the last day of each month ending after March 31, 1997 and the unaudited consolidated statements of income and cash flows of the Company and the Subsidiaries for the one-month periods then ended. The Company will ensure that such Unaudited Statements are complete and correct in all material respects, have been prepared in accordance with the books and records of the Company and the Subsidiaries, and present fairly the consolidated financial position of the Company and the Subsidiaries and their consolidated results of operations and cash flows as of and for the respective dates and time periods in accordance with GAAP applied on a basis consistent with prior accounting periods, except as noted thereon and subject to normal and recurring year-end adjustments which are not expected to be material in amount.

#### **SECTION 6.11. Directors of Acquiror.**

Immediately following the Effective Time, the Board of Directors of Acquiror shall be expanded to include two additional directors, and shall initially consist of

(i) the directors serving immediately prior to the Effective Time, (ii) Mr. Richard A. Lumpkin and (iii) Mr. Robert J. Currey.

#### **SECTION 6.12. Environmental Matters.**

(a) The Company will provide access to Acquiror, within fifteen (15) days after the date of this Merger Agreement, to all information in the possession of the Company or any Subsidiary that pertains to the environmental history of the Real Property and the operations of the Company and the Subsidiaries.

(b) The Company will promptly furnish to Acquiror written notice of any Hazardous Discharge or of any actions or notices described in Section 3.33(b).

(c) The Company will, at its expense, cause to be prepared and delivered to Acquiror prior to the Closing Date a Phase I environmental report on each parcel of the Real Property designated by Acquiror and, if recommended under the Phase I environmental report and so requested by Acquiror, a Phase II environmental report, in each case prepared by an environmental consultant acceptable to Acquiror (the "Environmental Reports"). If any such Environmental Report discloses the presence of any Hazardous Materials or the risk of contamination from any off-site Hazardous Materials, such Environmental Report shall include an estimate of the cost of any related remediation.

#### **SECTION 6.13. Acquiror SEC Documents.**

Acquiror will file with the SEC all reports, schedules, forms, statements and other Documents required to be filed after the date of this Merger Agreement but before the Effective Time (the "Post-Signing SEC Documents").

#### **SECTION 6.14. Directors' and Officers' Insurance; Indemnification.**

Acquiror agrees that for the entire period from the Effective Time until at least six (6) years after the Effective Time, (a) Acquiror will cause the Surviving Corporation to maintain the Company's current directors' and officers' insurance and indemnification policy and related arrangements, or an equivalent policy and related arrangements, subject in either case to terms and conditions no less advantageous to the present and former directors and officers of the Company than those contained in the policy and arrangements in effect on the date hereof, for all present and former directors and officers of the Company, covering claims made and insurable events occurring prior to or within six (6) years after the Effective Time (provided that the Surviving Corporation will not be required to maintain such policy except to the extent that the aggregate annual cost of maintaining such policy is not in excess of two hundred percent (200%) of the current annual cost, in which case the Surviving Corporation shall maintain such policies up to an annual

cost of two hundred percent (200%) of the current annual cost); and (b) Acquiror will cause the Surviving Corporation to maintain indemnification provisions for present and former officers and directors in the Surviving Corporation's certificate of incorporation and bylaws to the fullest extent permitted by Delaware Law. In the event of any threatened or actual claim, action, suit, proceeding or investigation, whether civil, criminal or administrative, including, without limitation, any such claim, action, suit proceeding or investigation in which any of the present or former officers or directors (the "**Managers**") of the Company is, or is threatened to be, made a party by reason of the fact that such Manager is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other entity, whether before or after the Effective Time, the parties hereto agree to cooperate and use their best efforts to defend against and respond thereto. It is understood and agreed that the Company shall indemnify and hold harmless, and after the Effective Time each of the Surviving Corporation and Acquiror shall indemnify and hold harmless, as and to the full extent that the Surviving Corporation would be permitted by applicable Law (and as to matters arising from or relating to this Merger Agreement and the possible change in control of the Company, to the full extent that Acquiror would be permitted under applicable Law), each such Manager against any losses, claims, damages, liabilities, costs, expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement in connection with any such claim, action, suit, proceeding or investigation; and in the event of any such claim, action, suit, proceeding or investigation (whether arising before or after the Effective Time), (i) the Managers may retain counsel satisfactory to them, and the Company, or the Surviving Corporation and Acquiror after the Effective Time, shall pay all reasonable fees and expenses of such counsel for the Managers promptly as statements therefor are received and (ii) the Company, or the Surviving Corporation and Acquiror after the Effective Time, will use their respective best efforts to assist in the vigorous defense of any such matter; provided that neither the Company nor the Surviving Corporation or Acquiror shall be liable for any settlement effected without its prior written consent (which consent shall not be unreasonably withheld); and provided further that the Company and the Surviving Corporation and Acquiror shall have only such obligation hereunder as is permitted by applicable Law to any Manager when and if a court of competent jurisdiction shall ultimately determine, and such determination shall have become final and non-appealable, that indemnification of such Manager in the manner contemplated is prohibited by applicable Law.

**SECTION 6.15. Board of Directors of Illinois Consolidated Telephone Company.**

Immediately following the Effective Time, the Board of Directors of Illinois Consolidated Telephone Company ("**Telephone Sub**") shall be reconstituted to

include a total of three (3) directors, and shall initially consist of Mr. Clark E. McLeod, Mr. Stephen C. Gray and Mr. Richard A. Lumpkin.

#### **SECTION 6.16. Officers.**

Immediately following the Effective Time, Mr. Richard A. Lumpkin shall become the Vice Chairman of the Board of Directors of Acquiror, to serve in such officer position at the discretion of the Board of Directors of Acquiror, and shall become the Chairman of the Board of Directors and Chief Executive Officer of Telephone Sub, to serve in such officer positions at the discretion of the Board of Directors of Telephone Sub.

#### **SECTION 6.17. Post-Merger Operations.**

It is the present intention of Acquiror that, following the Effective Time:

(a) the principal corporate office of Telephone Sub will continue to be located in Mattoon, Illinois.

(b) Telephone Sub will continue its separate corporate existence, operating under the name "Illinois Consolidated Telephone Company."

(c) Acquiror will continue to provide charitable contributions and community support within the service areas of the parties and each of their respective subsidiaries at levels substantially comparable to the levels of charitable contributions and community support provided by the parties and their respective subsidiaries within their service areas during the two-year period immediately prior to the date of this Merger Agreement, and, in the case of the charitable contributions and community support to be provided in the service area of the Company and the Subsidiaries, Acquiror will continue to support certain of the specific charities currently receiving support from the Company and the Subsidiaries, including the Special Olympics.

#### **SECTION 6.18. Stockholders' Agreement.**

The Company shall use its best efforts to cause to be delivered to Acquiror on behalf of each of the Company Shareholders that are not parties to the Stockholders' Agreement as of the date hereof an executed Document binding each such Company Shareholder to the Stockholders' Agreement within fifteen (15) days after the date of this Merger Agreement.

## ARTICLE VII

### CONDITIONS PRECEDENT

#### **SECTION 7.01. Conditions to Obligations of Each Party Under This Merger Agreement.**

The respective obligations of each party to effect the Merger and the other transactions contemplated herein shall be subject to the satisfaction at or prior to the Effective Time of the following conditions, any or all of which may be waived by agreement of Acquiror and the Company, in whole or in part, to the extent permitted by applicable Law:

(a) Shareholder Approval. This Merger Agreement and the Merger shall have been approved and adopted by the requisite vote of the Company Shareholders.

(b) No Order. No Governmental Entity or federal or state court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, judgment, injunction or other order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of the Merger; provided, however, that each of the parties shall use their best efforts to cause any such decree, judgment, injunction or other order to be vacated or lifted.

(c) HSR Act. The applicable waiting period, together with any extensions thereof, under the HSR Act shall have expired or been terminated.

(d) Other Approvals. All consents, waivers, approvals and authorizations required to be obtained, and all filings or notices required to be made, by Acquiror and the Company prior to consummation of the transactions contemplated in this Merger Agreement (other than the filing of the Articles of Merger in accordance with Illinois Law and Delaware Law) shall have been obtained from and made with all required Governmental Entities, except for such consents, waivers, approvals or authorizations which the failure to obtain, or such filings or notices which the failure to make, would not have a Company Material Adverse Effect or an Acquiror Material Adverse Effect or be reasonably likely to subject the Company, any Subsidiary, Acquiror, Acquiror Sub or any of their respective directors or officers to criminal liability or substantial penalties.



## **SECTION 7.02. Additional Conditions to Obligations of Acquiror and Acquiror Sub.**

The obligations of Acquiror and Acquiror Sub to effect the Merger and the other transactions contemplated herein are also subject to the satisfaction at or prior to the Effective Time of the following conditions, any or all of which may be waived by Acquiror, in whole or in part, to the extent permitted by applicable Law:

(a) **Representations and Warranties.** Each of the representations and warranties of the Company contained in this Merger Agreement shall be true and correct as of the date of this Merger Agreement and shall be true and correct in all material respects (except that where any statement in a representation or warranty expressly includes a standard of materiality, such statement shall be true and correct in all respects giving effect to such standard) as of the Effective Time as though made as of the Effective Time, except that those representations and warranties which address matters only as of a particular date shall remain true and correct in all material respects (except that where any statement in a representation or warranty expressly includes a standard of materiality, such statement shall be true and correct in all respects giving effect to such standard) as of such date, and except (A) for changes permitted or contemplated by this Merger Agreement or (B) in a representation and warranty that does not expressly include a standard of materiality, any untrue or incorrect statements therein that, considered in the aggregate, do not indicate a Company Material Adverse Effect. Acquiror shall have received a certificate of the chief executive officer or chief financial officer of the Company to that effect.

(b) **Updated Company Disclosure Schedule.** The revised versions of Sections 3.10 and 3.14(a) of the Company Disclosure Schedule delivered to Acquiror pursuant to Section 6.04 shall not disclose any Company Material Adverse Effect as compared to such Sections of the Company Disclosure Schedule as of the date of this Merger Agreement.

(c) **Agreements and Covenants.** The Company shall have performed or complied in all material respects with all agreements and covenants required by this Merger Agreement to be performed or complied with by it on or prior to the Effective Time. Acquiror shall have received a certificate of the chief executive officer or chief financial officer of the Company to that effect.

(d) **Consents Under Agreements.** The Company or the appropriate Subsidiary shall have obtained the consent or approval of each Person whose consent or approval shall be required in connection with the Merger under all Agreements to which the Company or any Subsidiary is a party, except where the failure to obtain any such consents or approvals, considered in the

aggregate, would not have a Company Material Adverse Effect or an Acquiror Material Adverse Effect.

(e) Opinion of Counsel. Acquiror shall have received from Schiff Hardin & Waite, counsel to the Company, an opinion dated the Closing Date, substantially in the form attached hereto as Exhibit D.

(f) Dissenters. No more than five percent (5%) of the Company Capital Stock issued and outstanding immediately prior to the Effective Time shall be Dissenting Shares.

(g) No Challenge. There shall not be pending any action, proceeding or investigation by any Governmental Entity (i) challenging or seeking material damages in connection with the Merger or the conversion of Company Capital Stock into Acquiror Common Stock pursuant to the Merger, or seeking to place limitations on the ownership of shares of Company Capital Stock (or shares of common stock of the Surviving Corporation) by Acquiror or Acquiror Sub, (ii) seeking to restrain or prohibit the consummation of the Merger or otherwise limit the right of the Company, any Subsidiary, Acquiror or any of its subsidiaries to own or operate all or any portion of the business or Assets of the Company and the Subsidiaries or (iii) which otherwise is likely to have a Company Material Adverse Effect or an Acquiror Material Adverse Effect.

(h) Accountant Letters. Acquiror shall have received from the Company a "cold comfort" letter of Arthur Andersen LLP, dated the Effective Time and addressed to Acquiror, reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Merger Agreement.

(i) Investment Agreements. Acquiror shall have received from each Company Shareholder that is to receive shares of Acquiror Common Stock in the Merger a signed Investment Agreement. The number of Company Shareholders that are to receive shares of Acquiror Common Stock in the Merger and that are not "accredited investors" within the meaning of Rule 501(a) under the Securities Act, shall not exceed thirty-five (35), and each Company Shareholder that is not an accredited investor shall have such knowledge and experience in financial and business matters, either alone or with an appropriate purchaser representative that has been appointed by such Company Shareholder, that it is capable of evaluating the merits and risks of the Merger.

(j) Employment Agreements. Acquiror shall have received executed copies of Employment Agreements from Mr. Richard A. Lumpkin, Mr. Robert J. Currey, Mr. J. Lyle Patrick and Mr. John Wray, except where

the failure to receive an executed Employment Agreement from any such Company Key Employee is the result of the death or disability of such Company Key Employee.

(k) Company Material Adverse Effect. Since December 31, 1996, there shall not have occurred a Company Material Adverse Effect (or any development that, insofar as reasonably can be foreseen, is likely to result in any Company Material Adverse Effect).

(l) Stockholders' Agreement. Acquiror shall have received executed copies of the Stockholders' Agreement from or binding upon each of the Company Shareholders that are not parties to the Stockholders' Agreement as of the date hereof.

(m) Environmental Matters. The Environmental Reports shall indicate that the Real Property does not contain any Hazardous Materials and is not subject to any risk of contamination from any off-site Hazardous Materials, except to the extent that the presence of any such Hazardous Materials or the risk of such contamination would not have a Company Material Adverse Effect or an Acquiror Material Adverse Effect.

### **SECTION 7.03. Additional Conditions to Obligations of the Company.**

The obligations of the Company to effect the Merger and the other transactions contemplated herein are also subject to the satisfaction at or prior to the Effective Time of the following conditions, any or all of which may be waived by the Company, in whole or in part, to the extent permitted by applicable Law:

(a) Representations and Warranties. Each of the representations and warranties of Acquiror contained in this Merger Agreement shall be true and correct as of the date of this Merger Agreement and shall be true and correct in all material respects (except that where any statement in a representation or warranty expressly includes a standard of materiality, such statement shall be true and correct in all respects giving effect to such standard) as of the Effective Time as though made as of the Effective Time, except that those representations and warranties which address matters only as of a particular date shall remain true and correct in all material respects (except that where any statement in a representation or warranty expressly includes a standard of materiality, such statement shall be true and correct in all respects giving effect to such standard) as of such date, and except (A) for changes permitted or contemplated by this Merger Agreement or (B) in a representation and warranty that does not expressly include a standard of materiality, any untrue or incorrect statements therein that, considered in the aggregate, do not indicate an Acquiror Material Adverse Effect. The

Company shall have received a certificate of the chief executive officer or chief financial officer of Acquiror to that effect.

(b) Agreements and Covenants. Acquiror shall have performed or complied in all material respects with all agreements and covenants required by this Merger Agreement to be performed or complied with by it on or prior to the Effective Time. The Company shall have received a certificate of the chief executive officer or chief financial officer of Acquiror to that effect.

(c) Opinion of Counsel. The Company shall have received from Hogan & Hartson L.L.P. an opinion dated the Closing Date, substantially in the form attached hereto as Exhibit E.

(d) No Challenge. There shall not be pending any action, proceeding or investigation by any Governmental Entity (i) challenging or seeking material damages in connection with the Merger or the conversion of Company Capital Stock into Acquiror Common Stock pursuant to the Merger, or (ii) seeking to restrain or prohibit the consummation of the Merger.

## ARTICLE VIII

### TERMINATION, AMENDMENT AND WAIVER

#### SECTION 8.01. Termination.

This Merger Agreement may be terminated at any time (except where otherwise indicated) prior to the Effective Time, whether before or after approval of this Merger Agreement and the Merger by the Company Shareholders:

(a) by mutual written consent of Acquiror and the Company;

(b) (i) by Acquiror, if there has been a breach by the Company of any of their representations, warranties, covenants or agreements contained in this Merger Agreement, or any such representation and warranty shall have become untrue, in any such case such that Section 7.02(a) or Section 7.02(c) will not be satisfied and such breach or condition has not been promptly cured within ten (10) days following receipt by the Company of written notice of such breach;

(ii) by the Company, if there has been a breach by the Acquiror of any of its representations, warranties, covenants or agreements contained in this Merger Agreement, or any such representation and warranty shall have become untrue, in any such case such that Section 7.03(a) or Section 7.03(b) will not be satisfied and such breach or condition

has not been promptly cured within ten (10) days following receipt by Acquiror of written notice of such breach;

(c) by Acquiror, within forty-five (45) days after the date of this Merger Agreement, upon Acquiror's determination, based on its due diligence investigation and review of the Company and the Subsidiaries, that (i) there is or is reasonably likely to be any material diminution in the benefits expected to be derived by Acquiror as a result of the transactions contemplated by this Merger Agreement or (ii) any development has occurred or information been discovered that has, or is reasonably likely to have, or that indicates a Company Material Adverse Effect;

(d) by either Acquiror or the Company if any decree, permanent injunction, judgment, order or other action by any court of competent jurisdiction or any Governmental Entity preventing or prohibiting consummation of the Merger shall have become final and non-appealable;

(e) by either Acquiror or the Company if the Agreement shall fail to receive the requisite vote for approval and adoption by the Company Shareholders at the Company Shareholders' Meeting; and

(f) by either Acquiror or the Company if the Merger shall not have been consummated by March 31, 1998; provided, however, that this Merger Agreement may be extended not more than sixty (60) days by Acquiror by written notice to the Company if the Merger shall not have been consummated as a direct result of the Company having failed by such date to receive all regulatory approvals or consents required to be obtained by the Company with respect to the Merger; provided further, that the right to terminate this Merger Agreement under this Section 8.01(f) shall not be available to (i) Acquiror, where Acquiror's willful failure to fulfill any obligation under this Merger Agreement has been the cause of, or resulted in, the failure of the Effective Time to occur on or before such date, or (ii) the Company, where the Company's willful failure to fulfill any obligation under this Merger Agreement has been the cause of, or resulted in, the failure of the Effective Time to occur on or before such date.

#### **SECTION 8.02. Effect of Termination.**

In the event of termination of this Merger Agreement by either Acquiror or the Company as provided in Section 8.01, this Merger Agreement shall forthwith become void and there shall be no liability or obligation on the part of Acquiror, Acquiror Sub or the Company or any of their respective directors or officers except (i) as set forth in Sections 8.03 and 9.01 hereof, (ii) nothing herein shall relieve any party from liability for any breach hereof, (iii) each party shall be entitled to any remedies at law or in equity for such breach and (iv) Sections 8.02 and 8.03 and

Article IX shall remain in full force and effect and survive any termination of this Merger Agreement.

### **SECTION 8.03. Expenses.**

(a) Subject to subsections (b) and (c) of this Section 8.03, whether or not the Merger is consummated, all costs and expenses incurred in connection with this Merger Agreement and the transactions contemplated hereby shall be paid by the party incurring such expense.

(b) (i) If this Merger Agreement is terminated pursuant to Section 8.01(b)(i) or Section 8.01(e), then the Company shall promptly pay to Acquiror a termination fee of \$5 million plus reasonable fees and expenses incurred by Acquiror in connection with this Merger Agreement and the transactions contemplated hereby, not to exceed \$1 million.

(ii) If this Merger Agreement is terminated pursuant to Section 8.01(b)(ii), then Acquiror shall promptly pay to the Company a termination fee of \$5 million plus reasonable fees and expenses incurred by the Company in connection with this Merger Agreement and the transactions contemplated hereby, not to exceed \$1 million.

(c) (i) If this Merger Agreement is terminated by the Company pursuant to Section 8.01(f) and the willful failure of Acquiror to fulfill any obligation under this Merger Agreement has been the cause of, or resulted in, such termination, then Acquiror shall promptly pay to the Company a termination fee of \$5 million plus reasonable fees and expenses incurred by the Company in connection with this Merger Agreement and the transactions contemplated hereby, not to exceed \$1 million.

(ii) If this Merger Agreement is terminated by Acquiror pursuant to Section 8.01(f) and the willful failure of the Company to fulfill any obligation under this Merger Agreement has been the cause of, or resulted in, such termination, then the Company shall promptly pay to Acquiror a termination fee of \$5 million plus reasonable fees and expenses incurred by Acquiror in connection with this Merger Agreement and the transactions contemplated hereby, not to exceed \$1 million.

### **SECTION 8.04. Amendment.**

This Merger Agreement may be amended by the parties hereto at any time prior to the Effective Time; provided, however, that, after approval of the Merger by the Company Shareholders, no amendment may be made which would reduce the amount or change the type of consideration into which each share of Company Capital Stock shall be converted pursuant to this Merger Agreement upon

consummation of the Merger. This Merger Agreement may not be amended except by an instrument in writing signed by the parties hereto.

#### **SECTION 8.05. Extension; Waiver.**

At any time prior to the Effective Time, the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any Document delivered pursuant hereto and (c) subject to the proviso of Section 8.04, waive compliance with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby. The failure of any party to assert any of its rights under this Merger Agreement or otherwise shall not constitute a waiver of such rights.

### **ARTICLE IX**

#### **GENERAL PROVISIONS**

##### **SECTION 9.01. Nonsurvival of Representations and Warranties.**

None of the representations, warranties covenants and agreements in Article III or Article IV shall survive the Effective Time. This Section 9.01 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time.

##### **SECTION 9.02. Notices.**

All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered, mailed or transmitted if delivered personally, mailed by registered or certified mail (postage prepaid, return receipt requested) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses or sent by electronic transmission to the following telecopier numbers (or at such other address or telecopy number for a party as shall be specified by like notice):

- (a) If to Acquiror or Acquiror Sub:

McLeodUSA Incorporated  
McLeodUSA Technology Park  
6400 C Street SW  
PO Box 3177  
Cedar Rapids, Iowa 52406-3177  
Telecopier No.: (319) 298-7901  
Attention: Casey D. Mahon

With a copy (which shall not constitute notice) to:

Hogan & Hartson L.L.P.  
Columbia Square  
555 Thirteenth Street, N.W.  
Washington, DC 20004  
Telecopier No.: (202) 637-5910  
Attention: Joseph G. Connolly, Jr.

- (b) If to the Company:

Consolidated Communications Inc.  
121 South 17th Street  
Mattoon, Illinois 61938  
Telecopier No.: (217) 234-9934  
Attention: Steven L. Grissom

With a copy (which shall not constitute notice) to:

Schiff Hardin & Waite  
7200 Sears Tower  
Chicago, Illinois 60606  
Telecopier No.: (312) 258-5600  
Attention: James E. Brown

### **SECTION 9.03. Headings.**

The headings contained in this Merger Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Merger Agreement.

### **SECTION 9.04. Severability.**

If any term or other provision of this Merger Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions



and provisions of this Merger Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Merger Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

#### **SECTION 9.05. Entire Agreement.**

This Merger Agreement (together with the Exhibits, Schedules, the Company Disclosure Schedule and the Acquiror Disclosure Schedule and the other Documents delivered pursuant hereto) and the Confidentiality Agreement (as defined in Article X) constitute the entire agreement of the parties and supersede all prior agreements and undertakings, both written and oral, between the parties, or any of them, with respect to the subject matter hereof and, except as otherwise expressly provided herein, are not intended to confer upon any other Person any rights or remedies hereunder.

#### **SECTION 9.06. Assignment.**

This Merger Agreement shall not be assigned by operation of Law or otherwise.

#### **SECTION 9.07. Parties in Interest.**

This Merger Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Merger Agreement, express or implied, other than the right to receive the consideration payable in the Merger pursuant to Article II, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Merger Agreement.

#### **SECTION 9.08. Mutual Drafting.**

Each party hereto has participated in the drafting of this Merger Agreement, which each party acknowledges is the result of extensive negotiations between the parties.

#### **SECTION 9.09. Specific Performance.**

In addition to any other remedies which Acquiror may have at law or in equity, the Company hereby acknowledges that the Company Capital Stock and the Company and the Subsidiaries are unique, and that the harm to Acquiror resulting

from breaches by the Company of its obligations cannot be adequately compensated by damages. Accordingly, the Company agrees that Acquiror shall have the right to have all obligations, undertakings, Agreements, covenants and other provisions of this Merger Agreement specifically performed by the Company and that Acquiror shall have the right to obtain an order or decree of such specific performance in any of the courts of the United States of America or of any state or other political subdivision thereof.

#### **SECTION 9.10. Governing Law.**

This Merger Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of law.

#### **SECTION 9.11. Counterparts.**

This Merger Agreement may be executed and delivered in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

### **ARTICLE X**

#### **DEFINITIONS**

For purposes of this Merger Agreement, the following terms, and the singular and plural thereof, shall have the meanings set forth below:

"Acquiror" is defined in the Preamble to this Merger Agreement.

"Acquiror Class B Common Stock" is defined in Section 4.09.

"Acquiror Common Stock" is defined in Section 2.01.

"Acquiror Disclosure Schedule" is defined in Article IV.

"Acquiror Information" means (a) Acquiror's Annual Report on Form 10-K for the fiscal year ended December 31, 1996, (b) Acquiror's definitive proxy statement dated April 21, 1997 and (c) Acquiror's quarterly report on Form 10-Q for the period ending March 31, 1997.

"Acquiror Material Adverse Effect" means any event, change or effect that, individually or when taken together with all other such events, changes or effects, is or is reasonably likely to be materially adverse to the business, operations,

financial condition, Assets or liabilities of Acquiror and its subsidiaries, taken as a whole.

**"Acquiror Options"** is defined in Section 6.07.

**"Acquiror SEC Documents"** is defined in Section 4.07.

**"Acquiror Stock Option Plan"** is defined in Section 6.07.

**"Acquiror Sub"** is defined in the Preamble to this Merger Agreement.

**"Affiliate"** means: (a) with respect to an individual, any member of such individual's family; (b) with respect to an entity, any officer, director, shareholder, partner or investor of or in such entity or of or in any Affiliate of such entity; and (c) with respect to a person or entity, any person or entity which directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such person or entity.

**"affiliate"** means, with respect to any Person, a Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person;

**"Agreement"** means any concurrence of understanding and intention between two or more Persons with respect to their relative rights and/or obligations or with respect to a thing done or to be done (whether or not conditional, executory, express, implied, in writing or meeting the requirements of contract), including, without limitation, contracts, leases, promissory notes, covenants, easements, rights of way, covenants, commitments, arrangements and understandings.

**"Articles of Merger"** is defined in Section 1.02.

**"Assets"** means assets of every kind and everything that is or may be available for the payment of liabilities (whether inchoate, tangible or intangible), including, without limitation, real and personal property.

**"Audited Balance Sheets"** is defined in Section 3.08(a).

**"Audited Statements"** is defined in Section 3.08(a).

**"beneficial owner"** means, with respect to any shares of Company Capital Stock, a Person who shall be deemed to be the beneficial owner of such shares (i) which such Person or any of its affiliates or associates beneficially owns, directly or indirectly, (ii) which such Person or any of its affiliates or associates (as such term is defined in Rule 12b-2 under the Exchange Act) has, directly or indirectly, (A) the right to acquire (whether such right is exercisable immediately or subject only to the passage of time), pursuant to any Agreement or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (B) the right to vote

pursuant to any Agreement, (iii) which are beneficially owned, directly or indirectly, by any other Persons with whom such Person or any of its affiliates or associates has any Agreement for the purpose of acquiring, holding, voting or disposing of any such shares or (iv) pursuant to Section 13(d) of the Exchange Act and any rules or regulations promulgated thereunder.

"business day" means a day other than a Saturday, a Sunday or any other day on which commercial banks in the State of Illinois and in the State of Iowa are authorized or obligated to be closed.

"Blue Sky Laws" means state securities or blue sky laws and the rules and regulations thereunder.

"Cash Election" is defined in Section 2.01(a)(ii).

"Cash Election Fraction" is defined in Section 2.01(a)(i).

"Cash Election Number" is defined in Section 2.01(a)(i).

"Cash Election Shares" is defined in Section 2.01(a)(iii).

"Cash Overelection Fraction" is defined in Section 2.01(a)(iii).

"Certificates" is defined in Section 2.02(b).

"Charitable Trust Stock Election Shares" is defined in Section 2.01(a)(iv)(A).

"Charitable Trust Stock Overelection Fraction" is defined in Section 2.01(a)(iv)(B).

"Closing" is defined in Section 2.05.

"Closing Date" is defined in Section 2.05.

"Code" is defined in the Preamble to this Merger Agreement.

"Common Control Entity" means any trade or business under common control (as such term is defined in Section 414(b) or 414(c) of the Code) with the Company or any Subsidiary.

"Common Share Exchange Ratio" is defined in Section 2.01(a).

"Communications Act" means the Communications Act of 1934, as amended, and all Laws promulgated pursuant thereto or in connection therewith.

"Company" is defined in the Preamble to this Merger Agreement.

"Company Capital Stock" is defined in Section 3.04.

**"Company Common Shares"** is defined in Section 2.01(a).

**"Company Contracts"** is defined in Section 3.14(a).

**"Company Disclosure Schedule"** is defined in Article III.

**"Company Key Employees"** is defined in Section 6.07.

**"Company Licenses"** is defined in Section 3.07(a).

**"Company Material Adverse Effect"** means any event, change or effect that, individually or when taken together with all other such events, changes or effects, is or is reasonably likely to be materially adverse to the business, operations, financial condition, Assets or liabilities of the Company and the Subsidiaries, taken as a whole.

**"Company Series A Preferred Shares"** is defined in Section 2.01(b).

**"Company Series B Preferred Shares"** is defined in Section 2.01(c).

**"Company Shareholders"** is defined in Section 3.04.

**"Company Shareholders' Meeting"** is defined in Section 6.01.

**"Company Tax Returns"** means all Tax Returns required to be filed by the Company or any of the Subsidiaries (without regard to extensions of time permitted by law or otherwise).

**"Competing Transaction"** is defined in Section 5.05(a).

**"Confidentiality Agreement"** means the confidentiality agreement dated November 13, 1996 between Acquiror and the Company.

**"Control"** (including the terms **"Controlled by"** and **"under common Control with"**) means, as used with respect to any Person, possession, directly or indirectly or as a trustee or executor, of power to direct or cause the direction of management or policies of such Person (whether through ownership of voting securities, as trustee or executor, by Agreement or otherwise).

**"Defined Benefit Plan"** means a Plan that is or was a "defined benefit plan" as such term is defined in Section 3(35) of ERISA.

**"Delaware Law"** is defined in the Preamble to this Merger Agreement.

**"Dissenting Shareholder"** is defined in Section 2.04.

**"Dissenting Shares"** is defined in Section 2.01(a).

**"Documents"** means any paper or other material (including, without limitation, computer storage media) on which is recorded (by letters, numbers or other marks) information that may be evidentially used, including, without limitation, legal opinions, mortgages, indentures, notes, instruments, leases, Agreements, insurance policies, reports, studies, financial statements (including, without limitation, the notes thereto), other written financial information, schedules, certificates, charts, maps, plans, photographs, letters, memoranda and all similar materials.

**"DOL"** means the United States Department of Labor and its successors.

**"Effective Time"** is defined in Section 1.02.

**"Election Deadline"** is defined in Section 2.01(a)(vii).

**"Employment Agreements"** is defined in Section 6.07.

**"Encumbrance"** means any mortgage, lien, pledge, encumbrance, security interest, deed of trust, option, encroachment, reservation, order, decree, judgment, condition, restriction, charge, Agreement, claim or equity of any kind, other than: (i) Taxes not yet due or the validity of which is being contested in good faith by appropriate proceedings, and as to which the Company shall, if appropriate under GAAP, have set aside on its books and records adequate reserves; (ii) deposits under workmen's compensation, unemployment insurance, social security and other similar Laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations or surety or appeal bonds, or to secure indemnity, performance or other similar bonds in the ordinary course of business; (iii) liens securing claims or demands of mechanics or materialmen; (iv) liens which arise by operation of Law; (v) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of the Real Property; and (vi) liens securing purchase money security interests.

**"Environmental Laws"** means any Laws (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act), including any plans, other criteria, or guidelines promulgated pursuant to such Laws, now or hereafter in effect relating to Hazardous Materials generation, production, use, storage, treatment, transportation or disposal, or noise control, or the protection of human health or the environment.

**"Environmental Reports"** is defined in Section 6.12.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended, and all Laws promulgated pursuant thereto or in connection therewith.

**"ESOP"** means an "employee stock ownership plan" as such term is defined in Section 407(d)(6) of ERISA or Section 4975(e)(7) of the Code.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended, and all Laws promulgated pursuant thereto or in connection therewith.

**"Exchange Agent"** is defined in Section 2.02(a).

**"Exchange Fund"** is defined in Section 2.02(a).

**"FAA"** means the United States Federal Aviation Administration and its successors.

**"FCC"** means the United States Federal Communications Commission and its successors.

**"Federal Aviation Act"** means the Federal Aviation Act of 1958, as amended, and all Laws promulgated pursuant thereto or in connection therewith.

**"Financial Statements"** is defined in Section 3.08(a).

**"Form of Election"** is defined in Section 2.01(a)(ii).

**"GAAP"** means United States generally accepted accounting principles.

**"Governmental Entities"** means any governmental, quasi-governmental or regulatory authority, whether domestic or foreign.

**"group"** is defined in Section 5.05(a).

**"Hazardous Discharge"** means any emission, spill, release or discharge (whether on Real Property, on property adjacent to the Real Property, or at any other location or disposal site) into or upon the air, soil or improvements, surface water or groundwater, or the sewer, septic system, or waste treatment, storage or disposal systems servicing the Real Property, in each case of Hazardous Materials used, stored, generated, treated or disposed of at the Real Property.

**"Hazardous Materials"** means any wastes, substances or materials (whether solids, liquids or gases) that are deemed hazardous, toxic, pollutants or contaminants, including, without limitation, substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, any Environmental Laws. **"Hazardous Materials"** includes polychlorinated biphenyls (PCBs), asbestos, lead-based paints, and petroleum and petroleum products (including, without limitation, crude oil or any fraction thereof).

**"HSR Act"** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and all Laws promulgated pursuant thereto or in connection therewith.

**"ICC"** means the Illinois Commerce Commission and its successors.

**"Illinois Law"** is defined in the Preamble to this Merger Agreement.

**"Individual Account Plan"** means a Plan that is or was an "individual account plan" as such term is defined in Section 3(34) of ERISA.

**"Intellectual Property"** means (i) all fictitious business names, trademarks, service marks, trade names, trade styles, brands, private labels, copyrights and all registrations or applications therefor, (ii) all patents, inventions, discoveries, industrial models, processes, designs and all registrations or applications therefor, (iii) all trade secrets, know-how and other technical data, (iv) all general intangibles of like nature, and (v) all Agreements relating to any of the foregoing.

**"Investment Agreements"** is defined in Section 3.31.

**"IRS"** means the United States Internal Revenue Service and its successors.

**"knowledge"** will be deemed to be present with respect to the Company and the Subsidiaries or Acquiror, when the matter in question was brought to the attention of or, if due diligence had been exercised, would have been brought to the attention of, any officer or responsible employee of the Company or any Subsidiary, on the one hand, or Acquiror, on the other hand.

**"Laws"** means all foreign, federal, state and local statutes, laws, ordinances, regulations, rules, resolutions, orders, tariffs, determinations, writs, injunctions, awards (including, without limitation, awards of any arbitrator), judgments and decrees applicable to the specified Person and to the businesses and Assets thereof (including, without limitation, Laws relating to securities registration and regulation; the sale, leasing, ownership or management of real property; employment practices, terms and conditions, and wages and hours; building standards, land use and zoning; safety, health and fire prevention; and environmental protection, including Environmental Laws).

**"License"** means any franchise, grant, authorization, license, tariff, permit, easement, variance, exemption, consent, certificate, approval or order of any Governmental Entity.

**"Manager"** is defined in Section 6.14.

**"Merger"** is defined in the Preamble to this Merger Agreement.

**"Merger Agreement"** is defined in the Preamble to this Merger Agreement.



**"Minimum-Funding Plan"** means a Pension Plan that is subject to Title I, Subtitle B, Part 3, of ERISA (concerning "funding").

**"Mixed Election"** is defined in Section 2.01(a)(ii).

**"Multiemployer Plan"** means a "multiemployer plan" as such term is defined in Section 3(37) of ERISA.

**"NASD"** means the National Association of Securities Dealers, Inc.

**"Nasdaq"** is defined in Section 2.01(a).

**"Non-Election"** is defined in Section 2.01(a)(ii).

**"Non-Election Fraction"** is defined in Section 2.01(a)(v).

**"Non-Election Shares"** is defined in Section 2.01(a)(iii).

**"Other Arrangement"** means a benefit program or practice providing for bonuses, incentive compensation, vacation pay, severance pay, insurance, restricted stock, stock options, employee discounts, company cars, tuition reimbursement or any other perquisite or benefit (including, without limitation, any fringe benefit under Section 132 of the Code) to employees, officers or independent contractors that is not a Plan.

**"Ordinary Course of Business"** means ordinary course of business consistent with past practices and prudent business operations.

**"PBGC"** means the Pension Benefit Guaranty Corporation or its successors.

**"Pension Plan"** means an "employee pension benefit plan" as such term is defined in Section 3(2) of ERISA.

**"Per Share Common Share Cash Amount"** is defined in Section 2.01(a).

**"Person"** means an individual, corporation, partnership, joint venture, trust, unincorporated organization or other entity, or a Governmental Entity.

**"Plan"** means any plan, program or arrangement, whether or not written, that is or was an "employee benefit plan" as such term is defined in Section 3(3) of ERISA and (a) which was or is established or maintained by the Company or any Subsidiary; (b) to which the Company or any Subsidiary contributed or was obligated to contribute or to fund or provide benefits; or (c) which provides or promises benefits to any person who performs or who has performed services for the Company or any Subsidiary and because of those services is or has been (i) a participant therein or (ii) entitled to benefits thereunder.